

ORDER NO. 1881

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton; and
Nanci E. Langley

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators 1
Australian Postal Corporation – United States
Postal Service Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2014-2

NOTICE AND ORDER CONCERNING AUSTRALIAN POSTAL CORPORATION
NEGOTIATED SERVICE AGREEMENT

(Issued November 19, 2013)

I. INTRODUCTION

Background. On November 15, 2013, the Postal Service filed notice, pursuant to 39 CFR 3010.40 *et seq.*, announcing that it has entered into a bilateral agreement (Agreement) with Australian Postal Corporation (Australia Post), along with a Type 2 rate adjustment.¹ It asks that the Commission include the Agreement within the

¹ Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, November 15, 2013 (collectively, Notice).

Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators I (MC2010-35) product on grounds of functional equivalence.

II. THE POSTAL SERVICE'S FILINGS

Compliance with filing requirements. In addition to the Notice, the Postal Service filed an application for non-public treatment of materials filed under seal (Attachment 1); a redacted copy of the Australia Post Agreement (Attachment 2); and a redacted Excel file with supporting financial documentation. Notice at 1-2. The Postal Service also filed unredacted copies of the Agreement and the supporting financial documentation under seal. *Id.*

The Agreement is the successor agreement to one previously found to be functionally equivalent to the Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators I (MC2010-35).² Notice at 1. The Postal Service identifies Australia Post, the postal operator for Australia, and the Postal Service as the parties to the Agreement. *Id.* at 3.

The Postal Service states that the Agreement includes negotiated pricing for various inbound letter-post products, including small packets with delivery confirmation and registered mail. *Id.* It asserts that the Agreement will not only improve financial performance over default Universal Postal Union (UPU) rates, but will also improve operational performance and other factors. *Id.* The Postal Service indicates that it has incorporated the framework for a new product into the Agreement; however the parties are not yet prepared to introduce the new product.³ *Id.*

The Postal Service identifies January 1, 2014 as the intended effective date; states that its Notice provides the requisite advance notice; identifies a Postal Service

² See Docket No. R2012-2, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, November 23, 2011 (Order No. 996).

³ The Postal Service states that it will prepare and file any necessary classification and rate filings with the Commission when the new product is ready to be introduced. *Id.* at n.2.

official as a contact person; provides financial data and information in the redacted workpapers; describes expected operational improvements; and addresses why the Agreement will not result in unreasonable harm to the marketplace. *Id.* at 2-6. The intended duration is two years from the effective date, subject to earlier termination or extension by amendment. *Id.* Attachment 2 at 7.

Data collection and performance reporting proposals. The Postal Service proposes that no special data collection plan be created for the Agreement because it intends to report information on the Agreement through the Annual Compliance Report. *Id.* at 6. With respect to performance measurement, the Postal Service asks that it be excepted from separate reporting under 39 CFR 3055.3(a)(3) based on a previous Commission order.⁴ Notice at 6.

Statutory criteria. The Postal Service states that under 39 U.S.C. 3622(c)(10), the criteria for Commission review are whether the Agreement (1) improves the Postal Service's net financial position or enhances performance of operational functions; (2) will not cause unreasonable harm to the marketplace; and (3) will be available on public and reasonable terms to similarly situated mailers. *Id.* at 7. It states that it addresses the first two criteria in its Notice and views the third criterion as inapplicable, given Australia Post's status as the designated operator for Letter Post originating in Australia. *Id.*

Functional equivalence. The Postal Service notes that in Order No. 1864, the Commission requested that it put forth a proposal for identification of the appropriate baseline for comparison of agreements for functional equivalency purposes.⁵ Notice at 7-8. The Postal Service states that the Agreement is functionally equivalent to previously included agreements because "it is in all material respects the same as the predecessor agreement between these two parties ...," which was found by the

⁴ See Order No. 996 at 7.

⁵ Docket No. R2013-9, Order No. 1864, Order Approving an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Korea Post), October 30, 2013. In response, the Postal Service filed a motion for partial reconsideration. See Docket No. R2013-9, Motion of Partial Reconsideration of Order No. 1864, November 6, 2013.

Commission to be appropriately classified in this product grouping. *Id.* at 8. It also states that the terms of the Agreement fit within the proposed Mail Classification Schedule (MCS) language for Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators 1 and will conform to a common description. *Id.* The Postal Service asserts that in comparison with its predecessor, cost characteristics and the financial models used to project costs and revenues are the same and, except for minor changes, the Agreement and its predecessor are nearly identical. *Id.*

The Postal Service identifies two differences between the Agreement and its predecessor. Annex 7 of the Agreement incorporates an amendment made to the predecessor agreement. *Id.* at 8-9. Annex 8 concerning the potential new product is included in the Agreement, but is not yet operative. *Id.* at 9. It was included to facilitate implementation when the parties are prepared to introduce the service, without need for formal amendment of the Agreement. *Id.* Other minor differences are also included. *Id.* at 9-10. The Postal Service states that none of these differences detracts from the conclusion that the Agreement is functionally equivalent to its predecessor agreement. *Id.* at 10.

III. COMMISSION ACTION

The Commission, in conformance with rule 3010.44, establishes Docket No. R2014-2 to consider matters raised by the Notice. The Commission invites interested persons to submit comments on whether the Notice is consistent with the policies of 39 U.S.C. 3622 and 39 CFR part 3010.40. Comments are due no later than December 2, 2013.⁶

The public portions of the Postal Service's filings have been posted on the Commission's website. They can be accessed at <http://www.prc.gov>. Information on how to obtain access to non-public material is available at 39 CFR part 3007.

⁶ Due to the Notice's filing date and considering the Agreement's effective date, the Commission finds it appropriate to extend the comment period prescribed in 39 CFR 3010.44(a)(5) to December 2, 2013.

The Commission appoints Natalie R. Ward to serve as Public Representative in this proceeding.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission establishes Docket No. R2014-2 to consider matters raised by the Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, filed November 15, 2013.
2. Pursuant to 39 U.S.C. 505, Natalie R. Ward is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Comments by interested persons are due no later than December 2, 2013.
4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Ruth Ann Abrams
Acting Secretary